KEN KEN FOOD INDUSTRIES SDN. BHD.

v.

ABHIRAMY MUTHANA THEVAR KRISHNAN

HIGH COURT MALAYA, JOHOR BAHRU
ABU MANSOR ALI J
[CIVIL APPEAL NO. 16-4 OF 1987]
23 MARCH 1989

LABOUR LAW: *Complaint by employee who was downgraded to Labour Department - Employer ordered to pay arrears of salary - Complaint brought out of time - Whether the Director-General had jurisdiction to make the order - Employment Act 1955 ss. 14, 69, 70.*

As a result of a complaint by the respondent, the Labour Department held an inquiry and made a decision pursuant to, s. 69 of the Employment Act 1955 whereby the appellant/ employer was ordered to pay arrears of salary. This was an appeal against that decision.

The first ground of appeal was that the complaint was made out of time. It was submitted that under s. 69 of the Employment Act 1955, the Director-General can only assume jurisdiction if the complaint was made within 30 days. In this case the complaint was made to the Labour Department by the respondent on 24 March 1986 whereas the respondent was downgraded by the appellant/employer on 1 October 1985.

Held:

[1] The jurisdiction for inquiry is founded upon the provision given to the officer under s. 69 of the Employment Act 1955 where such inquiry can be held and such exercise of the powers conferred can only be held if the employee has made a complaint to him under the provisions of this part within 30 days from the date on which the decision to downgrade or suspend has been communicated to him either orally or in writing by his employer.

[2] There is no dispute that the complaint to the Labour Department made by the respondent was clearly out of time.

[3] When the Labour Department conducted the inquiry, the officer concerned was clearly without jurisdiction and consequently the order made was therefore void and of no effect.

[Appeal allowed. Order of Labour Officer quashed. Costs to the appellant to be taxed.]

Legislation referred to:
Employment Act 1955, ss. 14, 69(1), (3), 70

For the appellant - Ling Ying; M/s. Yee & Saga
For the respondent - In person

JUDGMENT

Abu Mansor Ali J:

As a result of the complaint by the respondent, the Labour Department held an inquiry and made a decision pursuant to s. 69 of the Employment Act 1955 whereby the appellant/employer was ordered to pay arrears of salary which consisted of the difference between the monthly pay and the daily rate pay of the respondent. The said decision was on 25 September 1986. The difference in pay was from 1 October 1985 to June totalling in all RM1,733.25. The appeal is against that decision. The appellant's first ground of appeal was that the complaint was made out of time.

Counsel for the appellant submitted that under s. 69 of the Employment Act 1955, the Director-General can only assume jurisdiction if the complaint is made within 30 days. In this particular case, the complaint was made on 24 March 1986 whereas the respondent was downgraded by the appellant/employer on 1 October 1985. She submitted that the complaint was therefore brought out of time when the time to complain in actual fact expired on 1 November 1985.

Counsel submitted further the inquiry by the Labour Department was laid down under s. 70 of the Employment Act 1955 and she submitted that the inquiry can only be held if the Director-General is empowered to exercise that power. As it can be clearly seen from the provision of s. 69(1) of the Employment Act 1955 reads:

Part XV - Complaints and Inquiries

Director-General's power to inquire into complaints.

69. (1) The Director-General may inquire into and decide any dispute between an employee and his employer or between an employee and any person liable under this Act, or any regulations, order or other subsidiary legislation whatsoever made thereunder to pay any wages due to such employee where such dispute arises out of any term in the contract of service between such employee and his employer or out of any of the provisions of this act, or any regulations, order or other subsidiary legislation whatsoever made thereunder, and in pursuance of such decision may make an order in the prescribed form for the payment by either party of such sum of money as he deems just without limitation of the amount thereof.

Provided that the Director-General shall not exercise the power conferred by this subsection unless the employee has made a complaint to him under the provisions of this part within thirty days from the date on which the decision to downgrade or suspend him under s. 14 is communicated to him either orally or in writing by his employer.

Counsel submitted that on this ground alone the appeal should be allowed in this case. After having considered Counsel's submission on this first ground of appeal, I am of the view that the appellant has succeeded in showing me that the Director-General was without jurisdiction when he held an inquiry on 25 September 1986 and came to the decision to award arrears of pay to the employee from 1 October 1985 to June 1986 in the sum mentioned, it is my considered view that when the Director-General made the inquiry, he was really acting or purportedly acting under his powers as given by s. 69(3) which reads:

69. (3) In addition to the powers conferred by subsections (1) and (2), the Director-General may inquire into and confirm or set aside any decision made by an employer to down-grade or suspend an employee under s. 14 and the Director-General may make such consequential orders as may be necessary to give effect to his decision.

As has quite rightly been submitted by Counsel for the appellant, the jurisdiction for inquiry is founded upon the provision given to the officer under s. 69 of the Employment Act 1955 where such inquiry can only be held if the employee has made a complaint to him under the provisions of this part within thirty days from the date on which the decision to downgrade or suspend has been communicated to him either orally or in writing by his employer. I think there is no dispute in reading encl. (13) p. 4 that the employee/respondent was downgraded on 1 October 1985 and the complaint to the Labour Department being made by her on 24 March 1986. She is clearly out of time and I hold that when the Labour Department conducted the inquiry on 25 September 1986, the officer concerned was clearly without jurisdiction and consequently the order made was therefore void and of no effect. I hold on this ground

alone the appeal should be allowed and I find there is no necessity for me to deal with the other grounds brought by the appellant in this case. I therefore allow the appeal and quash the order of the Labour Officer with costs to the appellant to be taxed.

Also found at [1990] 1 CLJ 88